

Hon. Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PLINTRON TECHNOLOGIES USA LLC,

Plaintiff,

v.

JOSEPH PHILLIPS, RICHARD PELLY,
THOMAS MATHEW, GREG
MCKERVEY, and DESIREE MICHELLE
GRAY,

Defendants.

No. 2:24-cv-00093-MJP

[PROPOSED] STIPULATED
PROTECTIVE ORDER

NOTE ON MOTION CALENDAR:
June 25, 2024

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Plaintiff Plintron Technologies USA LLC (“Plintron USA”), Defendant Joseph Phillips, and the Other Defendants (Richard Pelly, Thomas Mathew, Greg McKervery, and Michelle Taylor (formerly Desiree Michelle Gray)) (collectively, “the parties”) hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

1 2. “CONFIDENTIAL” MATERIAL

2 “Confidential” material shall include the following documents and tangible things
3 produced or otherwise exchanged:

4 (a) personal or other personnel information regarding current or former employees of
5 Plintron USA or a third-party business defined as contact information, social security numbers,
6 evaluations, compensation and related financial information, investigations, discipline, and other
7 information in personnel files and other employee records);

8 (b) Plintron USA’s or a third-party business’s contracts, operating plans, forecasts and
9 projections, customer lists, financial data and reports, operation information, sales and potential
10 sales information, inventory information, operating costs, profit and loss information, subscription
11 rates, commercially sensitive pricing information, policies and procedures, competitive analyses,
12 and marketing plans that are not generally available to the public, the unauthorized disclosure
13 and/or use of which the designating party believes would cause material and/or identifiable harm
14 to any Party and/or any Third Party;

15 (c) information pertaining to any Party or third-party individuals related to bank
16 accounts and other personal financial information, compensation and related financial information,
17 medical and health records, social security information, and contact information that the
18 Designating Party reasonably believes (i) is personal, (ii) is not generally available to the public,
19 and (iii) must be designated as Confidential Material in order to protect and preserve the interests
20 of such Third Party;

21 (d) information that either Party is obligated by contract or state or federal law to
22 protect as confidential;

23 (e) the Parties’ or Third Parties’ non-public financial or tax information;

24 (f) contracts that contain confidentiality clauses covering the information to be
25 produced; and

26 (g) legally protectable proprietary business information or trade secrets as those terms

1 are defined under Washington or Federal law.

2 In the case of any designation by a Designating Party or Third Party, such designation shall
3 be made prior to the production of the document or discovery response, as applicable, and
4 otherwise within a reasonable amount of time after receipt of the document or discovery response.

5 3. “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” MATERIAL

6 “Highly Confidential—Attorneys’ Eyes Only” material is any material defined as
7 “Confidential” material under section 2 of this Protective Order, and that is overly sensitive in
8 nature, the disclosure of which to another Party or non-Party would create a substantial risk of
9 serious harm that could not be avoided by less restrictive means.

10 4. SCOPE

11 The protections conferred by this agreement cover not only confidential material (as
12 defined above), but also (1) any information copied or extracted from confidential material; (2) all
13 copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
14 conversations, or presentations by parties or their counsel that might reveal confidential material.

15 However, the protections conferred by this agreement do not cover information that is in
16 the public domain or becomes part of the public domain through trial or otherwise.

17 5. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

18 5.1 Basic Principles. A receiving party may use confidential material that is designated
19 by another party or by a non-party in connection with this case only for prosecuting, defending, or
20 attempting to settle this litigation. Confidential material may be disclosed only to the categories
21 of persons and under the conditions described in this agreement. Confidential material must be
22 stored and maintained by a receiving party at a location and in a secure manner that ensures that
23 access is limited to the persons authorized under this agreement. “Confidential” as used below
24 encompasses both Confidential information or Highly Confidential—Attorneys’ Eyes Only
25 information.

26 5.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless otherwise ordered

1 by the court or permitted in writing by the designating party, a receiving party may disclose any
2 confidential material only to:

3 (a) the receiving party's counsel of record in this action, as well as employees
4 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

5 (b) the officers, directors, and employees (including in house counsel) of the
6 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
7 agree that a particular document or material produced is "Highly Confidential—Attorneys' Eyes
8 Only" and is so designated;

9 (c) experts and consultants to whom disclosure is reasonably necessary for this
10 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

11 (d) the court, court personnel, and court reporters and their staff;

12 (e) copy or imaging services retained by counsel to assist in the duplication of
13 confidential material, provided that counsel for the party retaining the copy or imaging service
14 instructs the service not to disclose any confidential material to third parties and to immediately
15 return all originals and copies of any confidential material;

16 (f) during their depositions, witnesses in the action to whom disclosure is
17 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
18 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
19 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
20 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
21 under this agreement;

22 (g) the author or recipient of a document containing the information or a
23 custodian or other person who otherwise possessed or knew the information.

24 5.3 Filing Confidential Material. Before filing confidential material or discussing or
25 referencing such material in court filings, the filing party shall confer with the designating party,
26 in accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will

1 remove the confidential designation, whether the document can be redacted, or whether a motion
2 to seal or stipulation and proposed order is warranted. During the meet and confer process, the
3 designating party must identify the basis for sealing the specific confidential information at issue,
4 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
5 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
6 the standards that will be applied when a party seeks permission from the court to file material
7 under seal. A party who seeks to maintain the confidentiality of its information must satisfy the
8 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the motion to seal.
9 Failure to satisfy this requirement will result in the motion to seal being denied, in accordance with
10 the strong presumption of public access to the Court's files.

11 6. DESIGNATING PROTECTED MATERIAL

12 6.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
13 or non-party that designates information or items for protection under this agreement must take
14 care to limit any such designation to specific material that qualifies under the appropriate
15 standards. The designating party must designate for protection only those parts of material,
16 documents, items, or oral or written communications that qualify, so that other portions of the
17 material, documents, items, or communications for which protection is not warranted are not swept
18 unjustifiably within the ambit of this agreement.

19 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
20 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
21 unnecessarily encumber or delay the case development process or to impose unnecessary expenses
22 and burdens on other parties) expose the designating party to sanctions.

23 If it comes to a designating party's attention that information or items that it designated for
24 protection do not qualify for protection, the designating party must promptly notify all other parties
25 that it is withdrawing the mistaken designation.

26 Written material, such as information contained in documents and other written discovery

1 responses, shall be designated as “Confidential” or “Highly Confidential—Attorneys’ Eyes Only”
2 by stamping “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
3 ONLY” respectively on each page of the document or discovery response.

4 6.2 Manner and Timing of Designations. Except as otherwise provided in this
5 agreement (see, *e.g.*, second paragraph of section 6.2(b) below), or as otherwise stipulated or
6 ordered, disclosure or discovery material that qualifies for protection under this agreement must
7 be clearly so designated before or when the material is disclosed or produced by stamping
8 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY”
9 respectively on each page of the document or discovery response, as applicable, and otherwise
10 within a reasonable amount of time after receipt of the document or discovery response by the
11 designating party.

12 (a) Information in documentary form: (*e.g.*, paper or electronic documents and
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),
14 the designating party must affix the words “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—
15 ATTORNEYS’ EYES ONLY” to each page that contains confidential material.

16 (b) Testimony given in deposition or in other pretrial proceedings: the parties
17 and any participating non-parties must identify on the record, during the deposition or other pretrial
18 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
19 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
20 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
21 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information
22 at trial, the issue should be addressed during the pre-trial conference.

23 (c) Other tangible items: the producing party (or the designating party if not the
24 producing party, but only with the producing party’s written consent) must affix in a prominent
25 place on the exterior of the container or containers in which the information or item is stored the
26 words “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” to

1 each page that contains confidential material. If only a portion or portions of the information or
2 item warrant protection, the producing party, to the extent practicable, shall identify the protected
3 portion(s).

4 6.3 Effect of Confidentiality Designations: The designation of information as
5 Confidential or Highly Confidential—Attorneys’ Eyes Only shall constitute a representation that
6 an attorney believes there is a valid basis for such designation. Information or documents that are
7 publicly available (through no wrongdoing or inadvertent mistake of any party) may not be
8 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES
9 ONLY.” The designation of documents or information as Confidential or Highly Confidential—
10 Attorneys’ Eyes Only shall not be construed as an admission that such documents or information
11 are relevant or material to any issues in the Action, authentic, or admissible at any hearing or trial
12 in the Action.

13 6.4 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the designating party’s
15 right to secure protection under this agreement for such material. Upon timely correction of a
16 designation, the receiving party must make reasonable efforts to ensure that the material is treated
17 in accordance with the provisions of this agreement.

18 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

19 7.1 Timing of Challenges. Any party or non-party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a designating party’s confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 7.2 Meet and Confer. The parties must make every attempt to resolve any dispute
26 regarding confidential designations without court involvement. Any motion regarding

confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without court action. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

7.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention, the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanctions. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” that party must:

(a) promptly notify the designating party in writing and include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential

1 material to any person or in any circumstance not authorized under this agreement, the receiving
2 party must immediately (a) notify in writing the designating party of the unauthorized disclosures,
3 (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the
4 person or persons to whom unauthorized disclosures were made of all the terms of this agreement,
5 and (d) request that such person or persons execute the “Acknowledgment and Agreement to Be
6 Bound” that is attached hereto as Exhibit A.

7 10. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
8 MATERIAL

9 When a producing party gives notice to receiving parties that certain inadvertently
10 produced material is subject to a claim of privilege or other protection, the obligations of the
11 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision
12 is not intended to modify whatever procedure may be established in an e-discovery order or
13 agreement that provides for production without prior privilege review. The parties agree to the
14 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

15 11. NON TERMINATION AND RETURN OF DOCUMENTS

16 Within 60 days after the termination of this action, including all appeals, each receiving
17 party must return all confidential material to the producing party, including all copies, extracts and
18 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
20 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
21 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work
22 product, even if such materials contain confidential material.

23 The confidentiality obligations imposed by this agreement shall remain in effect until a
24 designating party agrees otherwise in writing or a court orders otherwise.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: June 25, 2024

3 McNAUL EBEL NAWROT & HELGREN CORR CRONIN LLP
4 PLLC

5 By: s/ Daniel M. Weiskopf
6 Daniel M. Weiskopf, WSBA No. 44941
Attorney for Plaintiff

By: s/ Jack Lovejoy
Jack Lovejoy, WSBA No. 36962
Attorney for Other Defendants

7 WHITE & CASE LLP

DAVIS WRIGHT TREMAINE LLP

8 By: s/ Michael Songer
9 Michael Songer, admitted *pro hac vice*
Attorney for Plaintiff

By: s/ Devin Smith
Devin Smith, WSBA No. 42219
Attorney for Defendant Phillips

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any
3 documents, electronically stored information (ESI) or information, whether inadvertent or
4 otherwise, in this proceeding shall not, for the purposes of this proceeding or any other federal or
5 state proceeding, constitute a waiver by the producing party of any privilege applicable to those
6 documents, including the attorney-client privilege, attorney work-product protection, or any other
7 privilege or protection recognized by law. This Order shall be interpreted to provide the maximum
8 protection allowed by Fed. R. Evid. 502(d). The provisions of Fed. R. Evid. 502(b) do not apply.
9 Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review
10 of documents, ESI or information (including metadata) for relevance, responsiveness and/or
11 segregation of privileged and/or protected information before production. Information produced
12 in discovery that is protected as privileged or work product shall be immediately returned to the
13 producing party.

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15 DATED: June 25, 2024

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19 The Honorable Marsha J. Pechman
20 United States District Court Judge
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
 _____ [print or type full address], declare under penalty of
 perjury that I have read in its entirety and understand the Stipulated Protective Order that was
 issued by the United States District Court for the Western District of Washington on [date] in the
 case of *Plintron Technologies USA LLC v. Joseph Phillips, et al.*, Case No. 2:24-cv-00093-MJP.
 I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I
 understand and acknowledge that failure to so comply could expose me to sanctions and
 punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
 any information or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective
 Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____